Definitions of Information Technology (Amendment) Act, 2008

Introduction:

Information Technology has played very important role in the lives of people. Paper based communication has been substituted by E-communication and also we have new concepts such as E-governance, E-commerce, E-banking, E-contract and so on. We can interact with anyone, anywhere and everywhere in no time. We can find valuable information while sitting at home. We can also work at any time.

Further, the Information Technology act, 2000 has played commendable role in creating order in E-society in India. It helped in:

1. Facilitating E-commerce, E-governance and E-contract.
2. Establishing supervisory body (CCAs) to supervise certifying authorities.
3. Issuing licences to CAs so that they can issue DSC and ESCs to subscriber.
4. Making consequential amendments in other existing laws so as to facilitate E-commerce and E-governance.

Information Technology covers a broad spectrum of hardware and software solutions that enable organizations to gather, organize, and analyze data that helps them achieve their goals. It also details technology-based workflow processes that expand the capacity of an organization to deliver services that generate revenue. The four main focuses of IT personnel are business computer network and database management, information security, business software development, and computer tech support.

Use of ICTs, internet etc. is fast expanding in 21st century. Being 'online' or using the internet is a term now commonly used during conversation between students, professionals and even home makers. The internet with all the benefits of anonymity is an exciting new way to communicate. Now the internet is Omni present. It is known as a big bazaar. The internet is now recognised as an international system, a communication medium that allows anyone from any part of the globe with access to the internet to freely exchange information and share data. People are now more connected even globally than ever before. The word internet is derived from two words, interconnection and networks. Also referred to as "the net", internet is a worldwide system of computer networks, that is, a network of networks, which allows the user to share information on those linked computers.

It consists of thousand of separately administered networks of various sizes and types. Each of these networks comprises number of computers, or local area network (LANs) are connected by using public switched network to create a wide area network (WAN) and when number of WANs and other interconnected networks such as intranet and extranet are connected, it results in internet. Therefore, internet is worldwide computer network. All computers connected to the internet communicate to each other only by using a common set of rules which are commonly known as protocol. For this communication each computer should have its own address. Such address is called IP address. Further, ISPs are the entities which provide connection to internet. According to a recent study, the number of internet users in India could be as many as 50 million. The number of internet users has more than doubled since 2000 to about one billion people across the world. Internet addiction is alarmingly on the rise. In fact, India boasts of being the fifth country in terms of the number of internet users.#

Brief Description of Definitions covered under Information Technology Act, 2008:

As Amended by Information Technology Amendment Bill 2006 passed in Lok Sabha on Dec 22nd and in Rajya Sabha on Dec 23rd of 2008 An Act to provide legal recognition for the transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "Electronic Commerce", which involve the use of alternatives to paper based methods of communication and storage of information , to facilitate electronic filings of documents with the Government agencies and further to amend the Indian Penal Code, Indian Evidence Act, 1872,, The Bankers' Books Evidence Act, 1891, and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30 th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law; AND WHEREAS the said resolution recommends inter alia that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information; AND WHEREAS it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records, BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:-

I. PRELIMINARY

1. Short Title, Extent, Commencement and Application (1) This Act may be called the Information Technology Act, 2000. [As Amended by Information technology (Amendment) Act 2008] P.S: Information Technology (Amendment) Bill 2006 was amended by Information Technology Act Amendment Bill 2008 and in the process; the underlying Act was renamed as Information Technology (Amendment) Act 2008 herein after referred to as ITAA 2008.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention hereunder committed outside India by any person.

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.[Act notified with effect from October 17, 2000. Amendments vide ITAA-2008 notified with effect from....]

(4) (Substituted Vide ITAA-2008) Nothing in this Act shall apply to documents or transactions specified in the First Schedule by way of addition or deletion of entries thereto. 2 (5) (Inserted vide ITAA-2008) Every notification issued under sub-section (4) shall be laid before each House of Parliament

2 Definitions

(1) In this Act, unless the context otherwise requires,

(a) **"Access"** with its grammatical variations and cognate expressions means gaining entry into, instructing or communicating with the logical, arithmetical, or memory function resources of a computer, computer system or computer network;

(b) **"Addressee"** means a person who is intended by the originator to receive the electronic record but does not include any intermediary;

(c) "**Adjudicating Officer"** means adjudicating officer appointed under subsection (1) of section 46;

(d) "**Affixing Electronic Signature"** with its grammatical variations and cognate expressions means adoption of any methodology or procedure by a person for the purpose of authenticating an electronic record by means of Electronic Signature;

(e) "**Appropriate Government"** means as respects any matter. (i) Enumerated in List II of the Seventh Schedule to the Constitution; (ii) relating to any State law enacted under List III of the Seventh Schedule to the Constitution, the State Government and in any other case, the Central Government;

(f) **"Asymmetric Crypto System"** means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature;

(g) **"Certifying Authority"** means a person who has been granted a license to issue a Electronic Signature Certificate under section 24;

(h) **"Certification Practice Statement**" means a statement issued by a Certifying Authority to specify the practices that the Certifying Authority employs in issuing Electronic Signature Certificates;

(ha) **"Communication Device"** means Cell Phones, Personal Digital Assistance (Sic), or combination of both or any other device used to communicate, send or transmit any text, video, audio, or image. (Inserted Vide ITAA 2008)

(i) "**Computer"** means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) (Substituted vide ITAA-2008) **"Computer Network"** means the interconnection of one or more Computers or Computer systems or Communication device through-

(i) The use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and

(ii) Terminals or a complex consisting of two or more interconnected computers or communication device whether or not the interconnection is continuously maintained;

(k) **"Computer Resource"** means computer, communication device, computer system, computer network, data, computer database or software; 3

(l) **"Computer System"** means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being

used in conjunction with external files, which contain computer programmes, electronic instructions, input data, and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;

(m) **"Controller"** means the Controller of Certifying Authorities appointed under sub-section (7) of section 17;

(n) **"Cyber Appellate Tribunal"** means the Cyber Appellate * Tribunal established under sub-section (1) of section 48 (* "Regulations" omitted)

(na) (Inserted vide ITAA-2008) **"Cyber cafe"** means any facility from where access to the internet is offered by any person in the ordinary course of business to the members of the public.

(nb) (Inserted Vide ITAA 2008) **"Cyber Security"** means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction.

(o) **"Data"** means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network. ,.and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer;

(p) **"Digital Signature"** means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3; (q) "**Digital Signature Certificate"** means a Digital Signature Certificate issued under subsection (4) of section 35;

(r) "**Electronic Form"** with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;

(s) "**Electronic Gazette"** means official Gazette published in the electronic form;

(t) "**Electronic Record**" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;

(ta) (Inserted vide ITAA-2006) "**electronic signature**" means authentication of any electronic record by a subscriber by means of the electronic technique specified in the second schedule and includes digital signature

(tb) (Inserted vide ITAA-2006) "**Electronic Signature Certificate**" means an Electronic Signature Certificate issued under section 35 and includes Digital Signature Certificate"

(u) "**Function**", in relation to a computer, includes logic, control, arithmetical process, deletion, storage and retrieval and communication or telecommunication from or within a computer;

(ua) "**Indian Computer Emergency Response Team**" means an agency established under sub-section (1) of section 70 B

(v) **"Information"** includes data, message, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche; (Amended vide ITAA-2008)

(w) (Substituted vide ITAA-2008) "**Intermediary**" with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online market places and cyber cafes.

(x) "**Key Pair**", in an asymmetric crypto system, means a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key;

(y) **"Law"** includes any Act of Parliament or of a State Legislature, Ordinances promulgated by the President or a Governor, as the case may be. Regulations made by the President under article 240, Bills enacted as President's Act under sub-clause (a) of clause (1) of article 357 of the Constitution and includes rules, regulations, bye-laws and orders issued or made there under

(z) "**License"** means a license granted to a Certifying Authority under section 24;

(za) "**Originator"** means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary;

(zb) "**Prescribed"** means prescribed by rules made under this Act;

(zc) "**Private Key"** means the key of a key pair used to create a digital signature;

(zd) "**Public Key**" means the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate;

(ze) "**Secure System**" means computer hardware, software, and procedure that -:

(a) Are reasonably secure from unauthorized access and misuse;

(b) Provide a reasonable level of reliability and correct operation;

(c) Are reasonably suited to performing the intended functions; and

(d) adhere to generally accepted security procedures;

(zf) "**Security Procedure**" means the security procedure prescribed under section 16 by the Central Government;

(zg) "**Subscriber"** means a person in whose name the Electronic Signature Certificate is issued;

(zh) **"Verify"** in relation to a digital signature, electronic record or public key, with its grammatical variations and cognate expressions means to determine whether

(a) the initial electronic record was affixed with the digital signature by the use of private key corresponding to the public key of the subscriber;

(b) the initial electronic record is retained intact or has been altered since such electronic record was so affixed with the digital signature.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Conclusion

The Information Technology Amendment Act, 2008 (IT Act 2008) is a substantial addition to India's Information Technology Act (ITA-2000). The IT Amendment Act was passed by the Indian Parliament in October 2008 and came into force a year later. The Act is administered by the Indian Computer Emergency Response Team (CERT-In).

The original Act was developed to promote the IT industry, regulate e-commerce, facilitate e-governance and prevent cybercrime. The Act also sought to foster security practices within India that would serve the country in a global context. The Amendment was created to address issues that the original bill failed to cover and to accommodate further development of IT and related security concerns since the original law was passed.

Changes in the Amendment include: redefining terms such as "communication device" to reflect current use; validating electronic signatures and contracts; making the owner of a given IP address responsible for content accessed or distributed through it; and making corporations responsible for implementing effective data security practices and liable for breaches.

The Amendment has been criticized for decreasing the penalties for some cybercrimes and for lacking sufficient safeguards to protect the civil rights of individuals. Section 69, for example, authorizes the Indian government to intercept, monitor, decrypt and block data at its discretion. According to Pavan Duggal, a cyber law consultant and advocate at the Supreme Court of India, "The Act has provided Indian government with the power of surveillance, monitoring and blocking data traffic. The new powers under the amendment act tend to give Indian government a texture and colour of being a surveillance state."

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